IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3169 of 2006
To
FIRST APPEAL No. 3182 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE J. M. PANCHAL
&
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SARDAR SAROVAR NIGAM LTD & ANR. - Appellants
Versus
PATEL GOVINDBHAI AMRUTBHAI & ORS. - Respondents

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Appearance :

First Appeal Nos.3169 to 3174 of 2006
MS KRINA P CALLA, AGP for Appellants.
MR AJ PATEL for Original Claimants.

First Appeal Nos.3175 to 3178 of 2006
MS TANUJA N KACHCHHI, AGP for Appellants.
MR AJ PATEL for Original Claimants.

First Appeal Nos.3179 to 3182 of 2006
MR KRUNAL D PANDYA, AGP for Appellants.
MR AJ PATEL for Original Claimants.

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CORAM : HONOURABLE MR. JUSTICE J. M. PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 11/01/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908 is the legality of common judgment and award dated April 30, 2005 rendered by the learned Joint District Judge, 4th Fast Track Court, Patan, in Land Acquisition Reference Case Nos.2280 of 2002 to 2293 of 2002 by which the claimants have been awarded additional amount of compensation at the rate of Rs.20/- per square metre for their acquired lands, over and above compensation paid to them by the Special Land Acquisition Officer at the rate of Rs.1.20 Paise per square metre, *vide* his award dated June 15, 1996.

2. Sardar Sarovar Nigam Limited, Gandhinagar, proposed to the State Government to acquire the lands of Village: Akba, Taluka: Chanasma, District: Patan, for the public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Akba mentioned therein were likely to be needed for the said

public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on June 23, 1993. The owners of the lands were thereafter served with the notices under Section 4(1) of the Act. On receipt of the notices, they opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5-A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of Village: Akba, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on June 11, 1994. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per square metre. However, having regard to the materials placed before

him, the Special Land Acquisition Officer by his award dated June 15, 1996 offered compensation to the claimants at the rate of Rs.1.20 Paise per square metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Patan, where they were registered as Land Acquisition Reference Case Nos.2280 of 2002 to 2293 of 2002.

3. On behalf of the claimants, witness Baldevji Agarsang Solanki was examined at Exhibit 31. The witness mentioned in his testimony that the lands acquired were highly fertile and that each claimant was earning income of Rs.25,000/- to Rs.30,000/- per *vigha* per year from the sale of agricultural produces such as cumin-seeds, cotton, *juvar,* millet, wheat, etc. The witness

further stated in his testimony that his village was fully developed where all the basic facilities were available. According to this witness, lands of Village: Virsoda and Village: Gunjala were acquired for the purpose of construction of canal under the Narmada Project and those acquired lands were similar in all respects to the lands acquired in the instant case. According to the said witness, the claimants were entitled to enhanced compensation on the basis of previous awards of the Reference Court relating to the lands of Village: Virsoda and Village: Gunjala. In support of his assertion that Village: Virsoda and Village: Gunjala are situated near his village, the witness produced certificate issued by the Talati at Exhibit 28. The witness further produced previous award of the Reference Court relating to the lands of Village: Virsoda at Exhibit 29 and award of the Reference Court relating to the lands of Village: Gunjala at Exhibit 30.

This witness was cross-examined on behalf of the acquiring authorities. However, nothing substantial

could be elicited nor the assertion made by the witness that the lands which were acquired from Village: Virsoda and Village: Gunjala were similar in all respects to the lands acquired in the instant case, was demonstrated to be untrue.

4. On behalf of the acquiring authorities, witness Rameshbhai Kacharabhai Prajapati was examined at Exhibit 33. The witness mentioned in his examination-in-chief that the relevant factors were taken into consideration by the Special Land Acquisition Officer while determining the amount of compensation payable to the claimants and, therefore, the claimants were not entitled to enhanced compensation. It was stated by the witness that there was no industrial growth in the village nor there was railway station and as the lands acquired had no potential value for use as non-agricultural lands, the claimants were not entitled to claim more compensation than awarded by the Special Land Acquisition Officer. However, in cross-examination by the learned advocate for the claimants, the witness had to

admit that he had not seen the lands acquired and the award relating to the lands acquired was made by another officer.

5. Another witness Mr.Amratbhai Maganlal Patel was also examined on behalf of the acquiring authorities. However, his testimony is of little importance and, therefore, detailed reference to the same is avoided.

6. On the basis of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Virsoda produced at Exhibit 29 was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. On the basis of the said previous award, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.20/- per square metre, giving rise to these appeals.

7. This Court has heard Ms.Krina P. Calla,

learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned counsel for the original claimants, in each appeal at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. Though the assertion made by the witness that each claimant was earning Rs.25,000/- to Rs.30,000=00 per year per *vigha* from the sale of agricultural produces, could not be made good, there is no manner of doubt that the lands acquired were fertile and the claimants were able to raise different crops thereon. This is quite evident if one peruses the contents of Village Forms relating to the lands acquired produced by the witness of the claimants at Exhibits 17 to 27. The record does not indicate that the claimants had claimed enhanced compensation either on the basis of yield obtained from the lands acquired or on the basis of comparable sale instances. The claimants had produced two awards in

support of their claims for enhanced compensation. One was relating to the lands of Village: Virsoda produced at Exhibit 29 whereas another was relating to the lands of Village: Gunjala, which was produced at Exhibit 30. Though the Reference Court has relied upon the previous award of the Reference Court relating to the lands of Village: Virsoda for the purpose of determining the market value of the lands acquired in the instant case, this Court is of the opinion that the said award should not be relied upon because in the said case notification under Section 4(1) of the Act was published on August 5, 1994 whereas in the instant case, it was published in the official gazette on June 23, 1993. On publication of notification issued under Section 4(1) of the Act for acquiring the lands in the instant case on June 23, 1993, the prices of the lands situated in the adjoining Village: Virsoda must have gone up and, therefore, it would not be prudent to rely upon the award of the Reference Court relating to the lands of Village: Virsoda for the purpose of determining the market value of the lands acquired in the instant case.

Once Exhibit 29 is taken out of consideration, the Court is left with the award of Village: Gunjala produced at Exhibit 30 for the purpose of determining market value of the lands acquired. Exhibit 30 indicates that the lands of Village: Gunjala, Taluka: Detroj, were acquired for the public purpose of Kharaghoda Canal under the Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on October 23, 1992. Therein, the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.0.78 Paise per square metre, by his award dated January 29, 1996. Feeling aggrieved, the claimants had sought references. Accordingly, the references were made to the District Court, Ahmedabad, where they were registered as Land Acquisition Case Nos.714 of 1998 to 716 of 1998. In those cases, witness Madhavsinh Garmarsing was examined at Exhibit 28. On the basis of the evidence adduced on behalf of the claimants, the Reference Court by judgment and award dated July 5, 2004 awarded additional compensation to

the claimants at the rate of Rs.19.30 Paise per square metre, i.e. in all Rs.20.08 Paise per square metre. During the course of hearing of these appeals, the learned counsel for the parties have informed this Court that feeling aggrieved by the judgment and award dated July 5, 2004 rendered by the learned 4th Extra Assistant Judge (L.A.R.), Ahmedabad (Rural), Navrangpura, in Land Acquisition Case Nos.714 of 1998 to 716 of 1998, the claimants had preferred First Appeal Nos.2572 of 2006 to 2574 of 2006 wherein the learned Single Judge of this Court has reduced the amount of compensation payable to the claimants at the rate of Rs.20/- per square metre. The perusal of Exhibit 30 would indicate that the Reference Court while determining the market value of the lands acquired from Village: Gunjala, had relied upon the previous award of the lands relating to another village. Further, as admitted by the witness for the claimants, rainy season was totally irregular. Therefore, having regard to the facts of the case, this Court is of the opinion that on the basis of the previous award of the Reference Court relating to the lands of Village: Gunala, the

claimants would be in all entitled to compensation at the rate of Rs.20/- per square metre. It is well settled that the previous award of the Reference Court relating to a village, which has attained finality can be relied upon for the purpose of ascertaining the market value of the lands acquired from the adjoining village. Therefore, this Court is of the opinion that the claimants were justified in placing reliance upon the previous award of the Reference Court relating to the lands of Village: Gunjala. However, as held earlier, on the basis of the said award, the claimants would be entitled to compensation in all at the rate of Rs.20/- per square metre for their acquired lands and, therefore, to that extent, the appeals filed by the State will have to be allowed.

9. For the aforesaid reasons, all the appeals succeed in part. The common judgment and award dated April 30, 2005 rendered by the learned Joint District Judge, 4th Fast Track Court, Patan, in Land Acquisition Reference Case Nos.2280 of 2002 to 2293 of 2002 awarding additional amount of compensation to the claimants at the

rate of Rs.20/- per square metre for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.20 Paise per square metre by his award dated June 15, 1996 is hereby modified and it is held that the claimants in all would be entitled to the compensation at the rate of Rs.20/- per square metre for their acquired lands. Other benefits which are conferred on the claimants by the impugned award are not interfered with at all. The appeals are allowed to the extent indicated hereinabove only. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra